

REMARKS

Election/Restrictions

Within the Office Action, the Examiner withdrew claims 44 through 48 and 51 through 72 from further consideration pursuant to 37 C.F.R. § 1.142(b).

Requirement for Information under 37 C.F.R. §1.105

Within the Office Action, the Examiner noted that an extraordinary amount of prior art references have been cited as part of the Applicant's duty under 37 C.F.R. §1.56. The Examiner commented that a number of those references "do not appear to be quite relevant to the instant application." Furthermore, the Examiner requested that the Applicant specify which of the prior art references are of significant relevance. The Applicant responds to this request by initially pointing out that a great number of these references cited to the Examiner have previously been cited against the Applicant in domestic applications or in their foreign counterparts for related technology and for this assignee. .

The Applicant appreciates that considering each one of the cited references may be an arduous task. Nevertheless, an Applicant must be certain that material references cited by an Examiner in a case or foreign counterpart for related technology are brought to the attention of the Examiner. The Applicant has done so in this case to avoid even the slightest semblance of bad faith or intentional misconduct which may later cause a patent to be invalid or unenforceable for fraud. Furthermore, the MPEP instructs an Applicant that "[w]hen in doubt, it is desirable and safest to submit information. Even though the attorney, agent, or applicant doesn't consider it necessarily material, someone else may see it differently", and that "the question of relevancy in close cases should be left to the examiner, not the applicant." See MPEP § 2004 (10).

Therefore, in citing references from cases for related technology, the Applicant chose to err on the side of caution and inclusion rather than run the risk of not citing a reference when it was possible that reasonable minds would differ on whether a particular reference was relevant.

Objection to the Drawings under 37 C.F.R. §1.83(a)

Also within the Office Action, the Examiner objected to the drawings under 37 C.F.R. §1.83(a). Specifically, the Examiner claims that a “medium being laterally distributed in the heat exchanger” is not shown in the drawings. The Applicant is currently amending claim 42 such that all the claimed features are shown in the drawings.

Objection to the Specification

Also within the Office Action, the Examiner objected to the specification. The Applicant is currently amending the Abstract such that it clearly summarizes the salient steps of the inventive method as claimed. No new matter is introduced by the amendment.

Claim Rejections under 35 U.S.C. § 112

Also within the Office Action the Examiner rejected claims 37 through 43, 49 and 50 under 35 U.S.C. § 112. The Applicant is currently amending the claims to overcome this rejection. Specifically, antecedent basis is provided for the limitation “the at least one temperature value” in claim 37, claim 41 is amended to claim definite limitations, and claim 42 is amended to clarify the limitations claimed therein.

Furthermore, new claim 108 is currently added to clearly claim that the method of controlling a fluid flow in a cooling system can include additional temperature sensors. Claims 49 and 50 are also currently amended to depend on claim 108 and to clearly claim a method of controlling a fluid flow in a cooling system including an additional temperature sensor to measure the temperature value of points in the cooling system.

Claim Rejections under 35 U.S.C. § 102

Also within the Office Action the Examiner rejected claims 37 through 39, 49 and 50 under 35 U.S.C. § 102(b) as being anticipated by Mitsubishi Motors Corporation (JP 10-208781), (hereinafter, "Mitsubishi"). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Here, claims 37 through 39, 49 and 50 are not anticipated by Mitsubishi because they contain additional limitations not found in the reference. Specifically, independent claim 37 claims a method comprising the steps of "providing a heat exchanger thermally coupled with the at least one device" and "filling at least a portion of the heat exchanger with fluid from the at least one pump, the fluid having the ability to absorb and store heat". These limitations are not found in Mitsubishi.

Furthermore, the Examiner states that claim 41 "would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office Action and to include all the limitations of the base claim and any intervening claims." The Applicant is currently amending claim 37 to include the limitations present in claim 41 in which the Examiner characterized as conditionally-allowable. Furthermore, the Applicant has shown that the rejections based on 35 U.S.C. § 112 have been overcome. Therefore, claim 37 is allowable for the reasons claim 41 was considered allowable.

CONCLUSION

Claims 41 and 43 have been cancelled by the present amendment. Claims 37, 42, 49 and 50 are currently amended. New claim 108 has been added. No new matter is contained within these amendments. As explained above, Claim 37 is in condition for allowance over the Examiner's Rejection Under 35 U.S.C. § 102. Furthermore, claims 38-40, 42, 49-50 and 108 are in condition for allowance for depending on an allowable base claim.

For the reasons given above, applicants respectfully submit that the claims 1-8, 10-18, 20-28 and 30-38, as amended, are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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CERTIFICATE OF MAILING (37 CFR § 1.8(a))

I hereby certify that the paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage in first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

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